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OFFICE OF PETITIONS

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| In re Application of | : |
| Rabih Moughelbay et al. | : |
| Application No. 10/516,471 | : |
| Filed: November 29, 2004 | : |
| Attorney Docket No. 37388- | : |
| 404200 | : |
| Title: TYING DEVICE | : |

DECISION ON PETITION
PURSUANT TO
37 C.F.R. § 1.137(B)

This is a decision on the petition filed November 21, 2007, pursuant to 37 C.F.R. § 1.137(b)¹, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed February 15, 2006, which set a shortened statutory period for reply of three months. A response was received on August 15, 2006 (along with a "preliminary amendment") however it does not appear that an extension of time under the provisions of 37 C.F.R. § 1.136(a) was requested. Accordingly, the above-

1 A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

identified application became abandoned on May 16, 2006. A notice of abandonment was mailed on September 18, 2006.

An original petition pursuant to 37 C.F.R. § 1.137(a) was filed on September 17, 2007, and was dismissed via the mailing of a decision on September 28, 2007, for failure to execute the petition. A renewed petition was filed on October 2, 2007, which was dismissed via the mailing of a decision on November 5, 2007, for failure to include a showing that the entire period of delay was unavoidable.

With this latest submission, Petitioner has set forth that the prior two filings were erroneously submitted under Rule § 1.137(a). Petitioner has included the petition fee, and the proper statement of unintentional delay. The amendment that was filed on October 2, 2007 shall serve as the proper reply. The fee that is associated with the filing of this petition will be charged to Petitioner's Deposit Account in due course, and it is noted that a terminal disclaimer is not required.

Having met each of the requirements of Rule § 1.137(b), the present petition is **GRANTED**.

Petitioner's request for a refund of the fee that was submitted with the petition that was filed pursuant to Rule § 1.137(a) cannot be granted however, as the petition was not necessitated by any error on the part of the Office. Moreover, petition fees are jurisdictional. See 37 C.F.R. § 1.137(a) (2).

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on October 2, 2007 can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225². All other inquiries

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

concerning examination procedures or status of the application
should be directed to the Technology Center.



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